

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

v.

STEPHEN M. GRIFFITT,
Defendants.

NO. CR-04-2081-LRS

**ORDER DENYING MOTION TO
DISMISS**

Currently PENDING BEFORE THE COURT is Defendant's Motion to Dismiss (Ct. Rec. 134). The Court previously heard argument and deferred ruling upon the motion due to an appeal then pending before the Ninth Circuit Court of Appeals which raised precisely the issue argued by the Defendant in his motion.

On September 9, 2005, the Ninth Circuit issued its ruling in *United States v. Murillo*, 422 F.3d 1152 (2005). *Murillo* held that notwithstanding *Blakely*, in determining whether a Washington state criminal conviction is of a crime punishable by a term exceeding one year for purposes of prosecution under 18 U.S.C. § 922(g)(1), the maximum sentence for the prior conviction is defined by the state criminal statute, not the maximum sentence in the particular case set by

1 Washington's sentencing scheme. This ruling contradicts Defendant's
2 position in the Motion to Dismiss.

3 Additionally, on October 27, 2005, the Defendant entered a plea of
4 guilty in case number 04-CR-2079-LRS pursuant to a plea agreement. The
5 agreement provides that at the time of sentencing the United States will
6 move to dismiss the charge contained herein. Ct. Rec. 194, ¶7.

7 **ACCORDINGLY**, for the aforementioned reasons, the Court hereby **DENIES**
8 Defendant's Motion to Dismiss (Ct. Rec. 134).

9 **IT IS SO ORDERED.** The District Court Executive is directed to enter
10 this order and to provide copies to all counsel.

11 **DATED** this 31st day of October, 2005.

12 ***s/Lonny R. Suko***

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14 LONNY R. SUKO
15 United States District Judge
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